MEMORANDUM OF LAW

DATE: August 4, 1987

TO: D. Cruz Gonzalez, Risk Management Director

FROM: City Attorney

SUBJECT: Supplemental Savings Plan Termination Payoffs

You have indicated in a memorandum dated June 30, 1987 that you have received requests for Supplemental Pension Savings Plan (SPSP) benefit payments from several former City employees who were terminated from The City of San Diego from six months to one year ago. You asked if The City of San Diego is required to pay these individuals interest on these accounts from the date of termination to the date of final distribution of benefits.

Both SPSP and SPSP M plan documents state in article VIII, section 8.01 that the value of a former employee's account is determined as of the date of termination. That section also requires that payment be made within thirty days of receipt from a participant's application for benefits. The plan contemplates a terminated employee making a timely application for benefits. When an employee has submitted a tardy request for payments, you are still required to calculate the amount of the employee's account as of the date of termination. Any interest earned after the date of termination cannot inure to the benefit of the former employee because this individual is no longer a plan participant pursuant to article I, section 1.16. Any interest earned during the period between the employee's date of termination and the date of distribution must remain in the trust fund. This is not to say that if The City of San Diego fails to make a timely payment to a former employee, that the former employee is without a remedy. Under those circumstances, the appropriate procedure would be for the former employee to file a claim against The City of San Diego.

We suggest that if you desire to transfer the monies earned under circumstances similar to those in the instant case described above into the forfeiture reserve account to be used to reduce the City's matching contribution pursuant to article III, section 3.02 that you consult with the Wyatt Company to determine if such a procedure is advisable. Of course, an election pursuant to article XI, section 11.1 would be required to implement such a procedure.

JOHN W. WITT, City Attorney

By

John M. Kaheny
Deputy City Attorney

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